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RESPONSE OF THE DISTRICT OF COLUMBIA TO THE PETITION FOR WRIT OF CERTIORARI OF THE UNITED STATES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1055

RUSSELL TRAIN, ADMINISTRATOR
ENVIRONMENTAL PROTECTION AGENCY,
Petitioner,

v.

DISTRICT OF COLUMBIA, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

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On January 26, 1976, the Solicitor General, on behalf of the Administrator of the Environmental Protection Agency filed a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in the above-referenced cause.

OPINION BELOW

The opinion of the court of appeals is reported at 521 F.2d 971 and printed in full at App. A, 1a-125a of the appendix of the petitioner.

RESPONSE

On March 29, 1976 the Clerk of the Court informed counsel for the Respondent District of Columbia that the Court has requested that a response be filed in this case by the District. Accordingly, the District makes the following response.

As is noted in the petition of the United States, other petitions from similar cases arising in other Circuits are pending before the Court.[1] In addition the *Commonwealth of Virginia* also has filed a petition for a *writ of certiorari* in this case, seeking review of the opinion of the District of Columbia Circuit.[2] The District of Columbia has not joined in that petition.

It is the position of the District of Columbia that the decisions of the Circuit Courts of Appeals in *Brown* and *Maryland,* supra n. 1, support its position fully. However, this is an issue of great importance reaching as it does into the roots of the relationship between the states and the federal government.[3] The question presented is bound to reoccur as the Administrator seeks to impose requirements on the states to assure compliance with the standards established under the Act. The inspection maintenance and retrofit provision of the regulations[4] were remanded to the Agency for revision by the Circuit Court of Appeals. To date no new promulgation has been issued by the Agency. The District will await the new promulgation and will then determine whether to again seek review before the Circuit Court.

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[1] *EPA* v. *Brown,* No. 75-909 (9th Cir.); *EPA* v. *State of Maryland,* No. 75-960 (4th Cir.).

[2] *Commonwealth of Virginia Ex Rel State Air Pollution Control Board* v. *Train,* No. 75-1050.

[3] The Clean Air Act Amendments, 42 U.S.C. 1857h(d) provides that the District is a "state."

[4] The pertinent regulatory requirements challenged are set forth in full in the Appendix of the Circuit Court opinion in *District of Columbia* v. *Train,* —— U.S. App. D.C. at——, 521 F.2d at 999 *et seq.*

The petitioner has repeatedly relied on the opinion of the Third Circuit in *Pennsylvania* v. *EPA,* 500 F.2d 246 (3rd Cir. 1974), relative to the authority of the Administrator of EPA to direct the states to adopt particular laws at his direction. The District of Columbia Circuit rejected the reasoning of the Third Circuit[5] with respect to the implication that arises when a federal regulation seeks to compel the states to enforce federal regulatory programs in this fashion.

The opinions of the Fourth and Ninth Circuits conflict with the Third Circuit opinion. The position of the District in this matter is no less serious than for the states. It is not merely that the District is denominated as a state for purposes of the Act that is significant. Congress exercises complete plenary power over the District,[6] and, in the exercise of that power, has delegated certain of its authority to the government of the District of Columbia.[7] In so doing it has reserved certain powers. However, Congress did not delegate to the various federal agencies the authority to promulgate regulations for the District of Columbia without regard to the legislative authority delegated to the Council. The police power hitherto completely vested in Congress has been delegated in large degree to the Council of the District of Columbia.[8] It is the position of the District of Columbia that the petitioner has no more authority to direct the Council with respect to what laws it will adopt than it has to tell a state legislature what laws to adopt.

In view of the prolonged delays that have arisen in the implementation of the clean air program nationally, it is

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[5] District of Columbia v. Train, —— U.S. App. D.C. ——, 521 F.2d at 994.

[6] Art. I, § 8, cl. 17 Constitution of the United States; see, *e.g., District of Columbia* v. *Thompson Co.,* 346 U.S. 100 (1953); *District of Columbia* v. *Carter,* 409 U.S. 418 (1973).

[7] District of Columbia Self-Government and Governmental Reorganization Act of 1973, P.L. 93-198, 87 Stat. 774.

[8] *Id.* Subject to Congressional review and to certain reservations not relevant here.

apparent that the issues that have been presented before the various circuits should be decided by this Court in order to decisively define the responsibilities between the states and federal agencies and to insure uniformity in enforcement of the Act.

CONCLUSION

As the issues presented relate to the air quality problems of this region the District welcomes final review of the questions of state and federal authority and responsibility under the Act. The similar question with respect to plan-revisions under the Act arose among the circuits and required final resolution by the Court in *Train* v. *NRDC*, 421 U.S. 60 (1975). No less a need exists here to resolve issues of exceptional significance.

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